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McCarthy Construction Company and Cement Masons Local 1, International Union of Bricklayers and Allied Craftworkers (BAC), AFL-CIO. Cases 7-CA-51474 and 7-CA-51647

February 2, 2010

## DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

This case involves violations of the National Labor Relations Act that McCarthy Construction Company (McCarthy) committed during initial contract bargaining with Cement Masons Local 1 (the Union). The judge found, and we agree, that McCarthy violated Section 8(a)(5) and (1) by unreasonably delaying its response to the Union's June 17, 2008 information request and by failing and refusing to meet with the Union at reasonable times for the purpose of collective bargaining as required by Section 8(d) of the Act. However, the judge found

<sup>1</sup> On May 27, 2009, Administrative Law Judge Arthur J. Amchan issued the attached decision. McCarthy and the Union filed exceptions and supporting briefs, and the General Counsel and McCarthy filed answering briefs. The Union joined the General Counsel's answering brief, and the General Counsel joined the Union's exceptions and supporting brief.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions to the extent consistent with this Decision and to adopt the recommended Order as modified and set forth in full below.

Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Teamsters Local 523 v. NLRB*, \_\_\_\_ F.3d

\_\_\_\_\_\_, 2009 WL 4912300 (10th Cir. Dec. 22, 2009); Narricot Industries, L.P. v. NLRB, 587 F.3d 654 (4th Cir. 2009); Snell Island SNF LLC v. NLRB, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); New Process Steel v. NLRB, 564 F.3d 840 (7th Cir. 2009), cert. granted 130 S.Ct. 488 (2009); Northeastern Land Services v. NLRB, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009) (No. 09-213). But see Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

<sup>2</sup> As the judge found, McCarthy did not fully respond to the Union's June 17 information request until September 16, 2008, a period of 3 months. McCarthy attempts to justify this delay in part by arguing that some of the requested information, specifically, a list of the jobs it had underway or had been awarded, was gathered by a new employee. However, whether or not the information was gathered by a new employee, it should have been readily available to McCarthy. As a result,

that McCarthy did not act unlawfully when it refused to provide the Union with information concerning the ownership, control, and current operations of Kensington Construction Company (Kensington), a suspected alter ego of McCarthy. For the reasons stated below, we disagree.

#### I. BACKGROUND

McCarthy Construction, a general contracting firm, is owned by Michael McCarthy, and has been in business since 1958. In 2003, Eric Teichner, a foreman for McCarthy Construction and former son-in-law of Michael McCarthy, began doing business as Kensington, which specialized in concrete finishing work.

In 2004, Kensington signed a collective-bargaining agreement with the Union, apparently at the behest of Michael McCarthy.<sup>3</sup> It then supplied union labor to McCarthy for various construction projects. Although Kensington and McCarthy never entered into a formal agreement, all but two of Kensington's jobs came from McCarthy. At McCarthy project sites, the Union observed Kensington employees working alongside McCarthy employees and using McCarthy's tools and equipment. The W-2 forms that Kensington employees received for this work bore McCarthy's business address. and when a Kensington employee experienced problems with his W-2, Teichner directed him to contact McCarthy. At the hearing, Teichner testified that, on McCarthy jobsites, he supervised Kensington employees in his role as a McCarthy foreman. He further testified that he never received a salary from Kensington.

In 2006, the Union's pension trust fund (the fund)<sup>4</sup> brought suit against Teichner, both individually and as owner of Kensington, because, it alleged, he did not remit the required contributions to the fund. The fund charged that Kensington and McCarthy were alter egos. On a motion for summary judgment, a Federal district court rejected that contention. *Cement Masons' Pension Trust Fund, Detroit & Vicinity v. McCarthy*, 2006 WL 770444 (E.D. Mich. March 24, 2006). The district court

the proffered explanation does not alter our decision to affirm the judge's finding.

In adopting the judge's conclusion that McCarthy failed and refused to meet with the Union at reasonable times, we emphasize that McCarthy did not respond to the Union's December 3, 2008 request for bargaining dates until February 18, 2009, a period of approximately 2-1/2 months.

<sup>&</sup>lt;sup>3</sup> At the hearing, Paul Dunford, the Union's business agent, testified, "Yeah, [Teichner] told me he was going to sign a contract per Mike. Mike McCarthy wanted him to sign a contact to do the concrete construction union. . . . Like I said, when [Teichner] signed the contract, he told me he was signing it per Mike McCarthy to perform all of McCarthy's concrete." (Tr. 45–46.) Neither Michael McCarthy nor Eric Teichner denied Dunford's testimony on this point.

<sup>&</sup>lt;sup>4</sup> The fund and the Union are legally separate entities.

judge relied on the Sixth Circuit's decision in *Trustees of the Resilient Floor Decorators Insurance Fund v. A&M Installations, Inc.*, 395 F.3d 244 (6th Cir. 2005), which he found precluded the application of the alter-ego doctrine to cases in which a nonunion company forms a union company and no preexisting labor agreements are disrupted. Alternatively, assuming that the alter-ego doctrine could apply to such cases, he concluded that the fund failed to prove that an alter-ego relationship actually existed.

Later, during a 2008 audit, the fund learned that Kensington's records had been in the possession of Patricia Smalley, an employee of McCarthy. When McCarthy terminated Smalley, she gave Kensington's records to Denise McCarthy, a daughter of Michael McCarthy and vice president of McCarthy Construction. At the hearing, Teichner testified that Smalley volunteered her services to Kensington. Teichner also testified that Smalley had the authority to withdraw funds from Kensington's checking account.

On October 21, 2008, and several other times during the course of its negotiations with McCarthy, the Union requested information and/or records pertaining to the ownership, control, and current operations of Kensington. The Union informed McCarthy that it needed the information for negotiations and also conveyed its belief that McCarthy and Kensington were alter egos. In response to the Union's request, one McCarthy negotiator said she did not believe Kensington was still in business, but another negotiator requested time to research the issue. In any event, McCarthy refused to provide the requested information. At the hearing, Teichner testified that Kensington ceased operations in 2008.

#### II. ANALYSIS

When a union requests information pertaining to a suspected alter-ego relationship, the union must establish the relevance of the requested information. A union cannot meet its burden based on a mere suspicion that an alter-ego relationship exists; it must have an objective, factual basis for believing that the relationship exists. See *M. Scher & Son, Inc.*, 286 NLRB 688, 691 (1987). Under Board law, the union is not obligated to disclose those facts to the employer at the time of the information request; 5 neither is the union obligated to show that the

information which triggered its request was accurate or even ultimately reliable.<sup>6</sup> Rather, the General Counsel need only demonstrate at the hearing that the union had, at the time of the request, a reasonable belief, based on objective evidence, that such a relationship exists. See generally *Cannelton Industries*, 339 NLRB 996, 997 (2003), and cases cited therein.

The Board generally will find an alter-ego relationship when two entities have substantially identical management, business purposes, operations, equipment, customers, supervision, and ownership.<sup>7</sup> Not all of these indicia need be present, and no one of them is a prerequisite to finding an alter-ego relationship. Unlawful motivation is not a necessary element of an alter-ego finding, but the Board also considers whether the purpose behind the creation of the suspected alter ego was to evade responsibilities under the Act. See *Diverse Steel, Inc.*, 349 NLRB 946, 946 (2007).

Because this case involves an information request, we need not determine whether an alter-ego relationship actually existed between McCarthy and Kensington, but only whether the Union had a reasonable, objectivelybased belief that such a relationship existed. Contrary to the judge, we find that the Union had such a belief. When it made its repeated requests, the Union knew that: (1) Teichner was a former son-in-law of Michael McCarthy; (2) Teichner worked as a foreman for McCarthy; (3) Kensington employees worked alongside McCarthy employees; (4) Kensington employees used McCarthy's tools and equipment; (5) Teichner directed a Kensington employee to contact McCarthy for his W-2; (6) Kensington employees' W-2s bore the business address of McCarthy; (7) McCarthy employees had control of Kensington's business records; and (8) Teichner apparently signed the union contract on Michael McCarthy's instructions. Based on this information, the Union reasonably believed that Kensington and McCarthy had similar business purposes, management, operations, equipment, supervision, and ownership, and thus were alter egos. See H&R Industrial Services, 351 NLRB 1222, 1224 (2007); Contract Flooring Systems,

<sup>&</sup>lt;sup>5</sup> Member Schaumber does not necessarily agree with Board precedent holding that a union can simply state a reason for its information request. *Contract Flooring Systems*, 344 NLRB 925, 925 (2005). Instead, he notes the standard set forth by the Third Circuit in *Hertz Corp. v. NLRB*, 105 F.3d 868, 874 (3d Cir. 1997), which requires a union to apprise an employer of *facts* tending to support its request for nonunit information by communicating those facts to the employer in its information request. However, he agrees to apply current Board law

for institutional reasons, and, in any event, he finds that the Union satisfied the alternative standard when it disclosed the facts underlying its belief at the hearing. See *Contract Flooring Systems*, supra.

<sup>&</sup>lt;sup>6</sup> Shoppers Food Warehouse, 315 NLRB 258, 259 (1994).

<sup>&</sup>lt;sup>7</sup> The Board has found common ownership when members of the same family own the suspected alter egos. See, e.g., *Walton Mirror Works*, 313 NLRB 1279, 1284 (1994) (owners were brothers-in-law). The Board has also found similar business purposes when a nonunion general contractor established what would become a union company to supply it with labor. See, e.g., *B.A.F.*, *Inc.*, 302 NLRB 188, 193 (1991), enfd. 953 F.2d 1384 (6th Cir. 1992).

supra at 928; *M. Scher & Son*, supra at 688 fn. 1, 691 (1987).<sup>8</sup>

As did the Federal district judge in the fund litigation case involving Kensington, the administrative law judge here concluded that an alter-ego relationship cannot be found where a nonunion company establishes a union company and no preexisting labor obligations are disrupted. In fact, however, Board law does permit an alterego finding in such circumstances. See, e.g., *E. J. Alrich Electrical Contractors*, 325 NLRB 1036, 1036 fn. 2, 1037 (1998). Moreover, insofar as the judge's decision can be interpreted as holding that unlawful motivation is a necessary element to finding an alter-ego relationship, it also conflicts with Board precedent, as already described. 10

For the reasons stated above, we find that the evidence is sufficient to establish a reasonable belief that McCarthy and Kensington were alter egos, <sup>11</sup> and therefore we conclude that McCarthy violated Section 8(a)(5) and (1) of the Act by refusing to provide the requested information about Kensington.

## AMENDED CONCLUSIONS OF LAW

Insert the following as Conclusion of Law 3.

"3. Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide information pertaining to own-

ership, control, and current operations of Kensington Construction Company as requested by the Union and which is relevant to collective bargaining."

#### AMENDED REMEDY

Having found that McCarthy has engaged in certain unfair labor practices, we will order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Because the Union requested the information pertaining to Kensington based on a reasonable belief that Kensington and McCarthy were alter egos, we will order McCarthy to provide the information in its possession, make a reasonable effort to secure the remainder, and if certain information is not available, explain the reasons for its unavailability. See *Contract Flooring Systems*, supra at 925, 928–929 (citing *Rochester Acoustical Corp.*, 298 NLRB 558, 563 (1990), enfd. mem. 932 F.2d 955 (2d Cir. 1991)). 12

In order to remedy McCarthy's failure and refusal to meet at reasonable times for purposes of collective bargaining, the judge ordered the parties to bargain face-to-face, in good faith, not less than 24 hours-per-month, in daily sessions of between 4 and 6 hours, or upon another schedule mutually agreed to by the parties, until either a collective-bargaining agreement or a good-faith impasse is reached. Recently, however, the Board declined to impose a similar remedy because "there is a lack of support for this remedy in current Board law." *Myers Investigative & Security Services*, 354 NLRB No. 51, slip op. at 1 fn. 2 (2009). Accordingly, we decline to adopt the judge's proposed remedy. <sup>13</sup>

The judge also ordered that the certification year be extended by 12 months. For the following reasons, we find that a 9-month extension is more appropriate.

The Board has held that, absent unusual circumstances, an employer will be required to honor a certification for a period of 1 year. *Mar-Jac Poultry Co.*, 136 NLRB 785, 786 (1962). The Board has found that, when an employer refuses to bargain in good faith with the elected bargaining representative during part or all of the year immediately following the certification, it has taken from the union the opportunity to bargain during the period when the union is generally at its greatest strength. The measures taken by the Board to assure at least a year of good-faith bargaining include an extension of the certification year. The length of such an extension is not necessarily a simple arithmetic calculation. Instead, the Board considers several factors when determining the

<sup>&</sup>lt;sup>8</sup> Other information suggesting an alter-ego relationship was disclosed at the hearing, including: (1) that a McCarthy employee had authorized payments from Kensington's checking account; (2) that Teichner acted as a McCarthy foreman when he supervised Kensington employees on McCarthy projects; (3) that Teichner had never been paid by Kensington; and (4) that all but two of Kensington's jobs came from McCarthy.

<sup>&</sup>lt;sup>9</sup> The judge also relied on the Sixth Circuit's opinion in *Resilient Floor*, supra. However, a different panel of the Sixth Circuit recently called that decision into question. In *Trustees of the Detroit Carpenters Fringe Benefit Funds v. Industrial Contracting, LLC*, 581 F.3d 313 (6th Cir. 2009), the court reaffirmed longstanding circuit precedent, which holds, in agreement with the Board, that an employer's intent to evade its collective-bargaining obligations is a factor to be considered in an alter ego analysis, but is not dispositive of the issue. The court characterized the *Resilient Floor* decision as one of "limited authority, given its alternative holdings and its ultimate conclusion that the workers in question were independent contractors and not, in fact, covered employees." Id. at 319. The court also suggested that *Resilient Floor* confused the purpose of the alter ego doctrine with the circuit's test for determining when it should be applied. Id.

<sup>&</sup>lt;sup>10</sup> The judge found *C.E.K. Industrial Mechanical Contractors*, 295 NLRB 635 (1989), enf. denied on other grounds 921 F.2d 350 (1st Cir. 1990) (union had reasonable belief that union and nonunion companies were alter egos) to be distinguishable from this case because there was evidence of unlawful motivation. As stated above, however, unlawful motivation is not a necessary element of an alter ego finding.

The Union argues that the judge erred by focusing exclusively on an alter-ego theory, stating that "the Union never . . . limited its claim of relevance to that theory alone." Because we find that the Union had a reasonable belief that Kensington and McCarthy were alter egos, we need not pass on this argument.

<sup>&</sup>lt;sup>12</sup> The fact that Kensington may have ceased operations does not deprive the Board of its authority to order this affirmative remedy. Cf. *E. J. Alrich Electrical Contractors*, supra at 1036, 1040.

<sup>&</sup>lt;sup>13</sup> Chairman Liebman continues to believe that such a remedy may be worthy of consideration in a future case. Id.

length of any extension, including the nature of the violations, the number, extent, and dates of the collective-bargaining sessions, the impact of the unfair labor practices on the bargaining process, and the conduct of the union during negotiations. See *Northwest Graphics, Inc.*, 342 NLRB 1288, 1289 (2004), enfd. 156 Fed. Appx. 331 (D.C. Cir. 2005), and cases cited therein.

Here, the parties held only 7 bargaining sessions between April 15, 2008, and March 10, 2009. During that time, 3 months elapsed before McCarthy fully responded to the Union's June 17 information request. Two and a half months elapsed before McCarthy provided the Union with additional bargaining dates after the Union's December 3, 2008 request that it do so. Moreover, the judge found that McCarthy cancelled at least 2 bargaining sessions without good cause between October 27. 2008, and March 10, 2009. Finally, McCarthy refused to respond to the Union's request for information pertaining to Kensington. On the other hand, the Union could have been more assertive in urging McCarthy to meet on a regular and more frequent basis.<sup>14</sup> The record also indicates that some good-faith bargaining occurred during part of the initial certification year. Given the totality of the circumstances, we find that a 9-month extension of the certification year is appropriate. 15

#### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, McCarthy Construction Company, Walled Lake, Michigan, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing and refusing to bargain in good faith with the Union, Cement Masons Local 1, International Union of Bricklayers and Allied Craftworkers (BAC), AFL—CIO, by refusing to meet with it at reasonable times, as required by Section 8(d) of the National Labor Relations Act.

(b) Failing to provide the Union, in a timely manner, with information that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of employees in the following unit:

All full-time and regular part-time employees working on building and construction projects employed by the Respondent at and out of its facility located at 1033 Rig Street, Walled Lake, Michigan; but excluding all office clerical employees, temporary employees, confidential employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

- (c) Failing and refusing to provide the Union with information that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of unit employees.
- (d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Timely provide the Union with the information it requested pertaining to the ownership, control, and current operations of Kensington Construction Company.
- (b) On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees concerning wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody that agreement in a signed contract. The Union's certification year is extended 9 months from the date the Respondent complies with this Order.
- (c) Meet with the Union at reasonable times to engage in collective bargaining as required by Section 8(d) of the Act.
- (d) Within 14 days after service by the Region, post at its Walled Lake, Michigan facility, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Re-

<sup>&</sup>lt;sup>14</sup> For instance, other than requesting bargaining dates in its December 3, 2008 letter and filing an unfair labor practice charge, the Union apparently made no other attempts to schedule bargaining sessions prior to McCarthy's February 18, 2009 response. Additionally, Union Business Agent Dunford testified that he never contacted the Union's attorney to inquire about the infrequency of bargaining sessions during this time.

<sup>&</sup>lt;sup>15</sup> The judge recommended a broad order requiring McCarthy to cease and desist from violating the Act "in any other manner." We find that a broad order is not warranted under the circumstances of this case, and substitute a narrow order requiring McCarthy to cease and desist from violating the Act "in any like or related manner." See *Hickmott Foods*, 242 NLRB 1357 (1979).

<sup>&</sup>lt;sup>16</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

spondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 17, 2008.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 2, 2010

Wilma B. Liebman,

Chairman

Peter C. Schaumber,

Member

# (SEAL) NATIONAL LABOR RELATIONS BOARD APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT unreasonably delay providing the Union, Cement Masons Local 1, International Union of Bricklayers and Allied Craftworkers (BAC), AFL—CIO, with information that is necessary and relevant to its performance as the exclusive collective-bargaining representative for the following unit:

All full-time and regular part-time employees working on building and construction projects employed by us at and out of our facility located at 1033 Rig Street, Walled Lake, Michigan; but excluding all office clerical employees, temporary employees, confidential employees, professional employees, managerial employees, guards and supervisors as defined in the National Labor Relations Act.

WE WILL NOT fail and refuse to provide the Union with information that is necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of unit employees.

WE WILL NOT fail to meet with the Union at reasonable times and confer with it in good faith to reach a collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL timely provide the Union with the information it requested pertaining to the ownership, control, and current operations of Kensington Construction Company.

WE WILL, on request, bargain in good faith with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit. The Union's certification year is extended 9 months from the date we comply with the Board's Order.

WE WILL meet with the Union at reasonable times and confer with it in good faith to reach a collective-bargaining agreement.

#### McCarthy Construction Company

Richard F. Czubaj, Esq., for the General Counsel.

Dennis M. Devaney and Jeffrey D. Wilson, Esqs. (Strobl & Sharp, P.C.), of Bloomfield Hills, Michigan, for the Respondent.

John R. Canzano, Esq. (Klimist, McKnight, Sale, McClow and Canzano, P.C.), of Southfield, Michigan, for the Charging Party.

# DECISION

# STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Detroit, Michigan, on March 18–19, 2009. The Union, Cement Masons Local 1 (BAC), filed the initial charges on August 29 and November 21, 2008, respectively. The General Counsel issued a complaint on October 22, 2008, and amended complaints on January 29 and March 2, 2009.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent, and Charging Party, I make the following

# FINDINGS OF FACT

#### I. JURISDICTION

Respondent, McCarthy Construction Company, a corporation, is a general contractor in the construction industry. Its principal place of business is in Walled Lake, Michigan, where in 2008, it derived gross revenues in excess of \$1,000,000 and provided services valued in excess of \$50,000 for Skanska USA and other enterprises within the State of Michigan, each of which is directly engaged in interstate commerce. Respon-

dent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### II. ALLEGED UNFAIR LABOR PRACTICES

Pursuant to Section 9(a) of the Act, the Union was certified as the exclusive representative of all Respondent's full-time and regular part-time employees working on building and construction projects on March 26, 2008. The General Counsel alleges that Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain in good faith with the Union. Specifically, the General Counsel alleges that:

Respondent has violated the Act by cancelling bargaining sessions without just cause and without offering alternative dates since October 6, 2008;

Respondent violated the Act by refusing to provide the Union with information it requested orally and in writing about the ownership, control, and current operations of Kensington Construction Company, which is owned by a McCarthy employee;

Respondent violated the Act in providing the Union information it requested in a dilatory manner between August 8, and September 17, 2008.

#### Chronology

March 26, 2008: the NLRB certifies the Union pursuant to Section 9(a) of the Act as the exclusive bargaining representative of all of Respondent's full-time and regular part-time employees working on building and construction projects at and out of its facility located at 1033 Rig Street, Walled Lake, Michigan.

*April 9, 2008*: the parties' first bargaining session is scheduled. It is then rescheduled for April 15, 2008, at Respondent's request.

April 15, 2008: The parties hold their first bargaining session.

April 29, 2008: Respondent cancelled a bargaining session scheduled for this date because the Union did not have a sample collective-bargaining agreement available for it.

May 13, 2008: Respondent cancelled a scheduled bargaining session because it was in the process of interviewing law firms to represent it in negotiations with the Union.

June 17, 2008: The Union faxed Respondent a letter suggesting 10 dates for bargaining between June 19 and July 14. It also requested that Respondent furnish to the Union payroll records, employment records, and other documents showing the name, address, last day worked, notice of layoffs, date of hire, rate of pay, benefits, and hours of work for all Respondent's employees working on construction and building projects since January 1, 2008.

Additionally, the Union requested a list of each job on which Respondent was working or had been awarded, with a description of the work and the scheduled or estimated start time.

*June 25, 2008*: Respondent retains attorney Dennis Devaney to represent it in bargaining with the Union.

*June 27*: Devaney wrote the Union suggesting July 16 or 17, as the next bargaining date.

July 17: The Union cancels a bargaining session scheduled for this date.

July 31: The parties hold their second bargaining session. The Union had previously sent Respondent a proposed collective-bargaining agreement. The Union proposal was apparently a standard contract presented to many union contractors. Respondent presented the Union with a counterproposal on July 31, after which the meeting ended. During the meeting Respondent's attorney, Devaney, informed the Union that he would provide it with compact discs (CDs) with the information requested by it on June 17.

August 8: Devaney transmits CD Rom copies of Respondent's payroll records for the first and second quarters of 2008.

August 20: Chuck Kukawka, financial secretary and treasurer of the Union, informed Devaney that he had trouble accessing the files on the CDs and that when the Union reviewed the CDs, it found that it contained only the name, rate of pay and hours worked for the employees listed. The CDs did not contain the following information the Union requested on June 17: the addresses of employees, last day worked, layoff notices, date of hire and benefits. Furthermore, Respondent did not provide any information regarding jobs awarded to it or underway.

August 22: Devaney replied to Kukawka. He suggested that the Union should have asked Respondent for assistance if it was having difficulty accessing the files on the CD. He provided additional information that the Union requested on June 17, but not: the last day worked, date of hire, benefits, and list of current jobs. Devaney notified the Union that he would be out of town from August 29–September 8, and asked the Union to suggest additional bargaining dates beginning the week of September 15.

August 29: The Union filed an unfair labor practice charge alleging that Respondent had failed and refused to provide it with the information requested.

September 10: The Union proposes September 15, 18, 19, 22, and 26 for bargaining sessions.

September 15: Devaney schedules a bargaining session for September 26.

September 16: Respondent provided a comprehensive response to the Union's June 17 information request (GC Exh. 9). It provided the last day worked for two employees, the dates of hire for 10 others, a description of benefits provided to two of its employees and list of 11 current jobs. With regard to some of these jobs, Respondent provided an estimate of the remaining amount of its work and with respect to all 11, it provided an estimated start date.

September 26: The parties hold their third bargaining session. They discuss health insurance at the bargaining session. The Union informed Respondent that it would not accept the company's counterproposal.

October 6: Devaney cancelled a bargaining session one hour before it is scheduled to commence due to the illness of the children of Respondent's vice president, Denise McCarthy.

October 14: The Union amends its unfair labor practice charge alleging that Respondent delayed providing it with the information it requested until September 2008.

<sup>&</sup>lt;sup>1</sup> The Union did not suggest any bargaining meetings between July 31 and September 15.

October 21: The parties held their fourth bargaining session. The parties discussed health insurance and other fringe benefits. Respondent asked the Union for the plan documents for the Union's health insurance plan.

The Union asked Respondent for certified payroll records from its prevailing wage projects. It also requested a list of jobs on which McCarthy had bid or was planning to bid and records of Kensington Construction Company. Kensington is owned by Eric Teichner, the former son-in-law of Respondent's President, Michael McCarthy. Teichner is also employed by Respondent as a foreman. Devaney responded to the Union by stating that he would have to discuss this with Michael McCarthy and get back to the Union. Denise McCarthy told the Union that she believed that Kensington was inactive.

October 22: The General Counsel issues a complaint predicated on the Union's amended charge. The Union provides Respondent information regarding its health insurance plan.

October 23: Devaney cancelled a bargaining session scheduled this date citing the need to collect the information requested by the Union on October 21.

October 27: The parties hold their fifth bargaining session. The Union provided its health insurance plan documents to Respondent. Respondent provided the Union with an updated list of jobs on which it was working. The Union reiterated its request for information about Kensington. Devaney told the Union he was looking into the matter.

Proposals and counterproposals had already been exchanged prior to this meeting. The Union asked Respondent if it had another counterproposal and it did not. The Union also asked Respondent for information on the jobs it had bid or planned to bid.

November 5: Attorney Devaney cancelled a bargaining session scheduled for 1 p.m. this day on the grounds that he needed the time to file an answer to the General Counsel's October 22 complaint. Devaney filed the answer at 11:31 a.m. on November 5.

November 10: The parties hold their sixth bargaining session. Neither Devaney nor Respondent's vice president, Denise McCarthy, who had previously attended bargaining sessions, attended the November 10 session. Instead, Devaney's law partner, Jeffrey Wilson attended, presented the Union with a company counterproposal and told the Union he would take any questions it had back to Devaney and Respondent. This is the last bargaining session between the parties until March 10, 2009.<sup>3</sup> On November 10, the Union made additional requests regarding certified payroll records submitted by Respondent on prevailing wage jobs.

*November 24*: The Union filed a new charge alleging that Respondent violated that Act by failing to provide relevant information it had requested since October 21.

December 1: Devaney postponed or cancelled a bargaining session scheduled for December 4, pending receipt from the Union of specific details as to what information it believed it had requested and had not been provided. Sometime between December 1 and 4, Devaney scheduled a business trip to Washington, D.C.

December 3: John Canzano, the Union's attorney, responded to Devaney citing the bidding information and information regarding Kensington Construction as the basis for the latest charge. Canzano at two points in his letter asked Devaney for a list of additional dates on which Respondent would be available for bargaining. Devaney did not contact the Union with additional dates until February 18, 2009.

December 9: The Union filed an amended charge alleging that Respondent had failed to bargain in good faith by repeatedly cancelling bargaining sessions without justification, sending bargaining representatives who did not have authority to bargain to negotiations and other dilatory conduct.<sup>4</sup>

December 3–February 18, 2009: There was no contact between Respondent and the Union between these dates.

*January 29, 2009*: The General Counsel issued the complaint in this matter setting a hearing date of March 18, 2009.

February 18, 2009: Attorney Devaney provided the Union with copies of certified payroll records requested on November 10, and proposed resuming collective bargaining on March 2 and 10. Devaney stated that the Union could not possibly have a good-faith belief that McCarthy and Kensington were alter egos and that therefore the Union was not entitled to information about Kensington. Moreover, Devaney stated that Respondent did not have knowledge or information with respect to Kensington's current business and operations. As grounds for his position, Devaney cited a United States District Court decision denying summary judgment for the Cement Mason's Pension Trust Fund in a lawsuit against Respondent. This decision is discussed in greater detail below.

February 26: Union Attorney Canzano replied to Devaney, setting up a bargaining session for March 10.

March 10, 2009: The parties met as scheduled for their seventh bargaining session. The Union rejected an employer counterproposal and presented Respondent with another proposal.

*March 17, 2009*: Respondent provided the Union with additional certified payroll records.<sup>5</sup>

March 18, 2009: The Instant Hearing Begins

Kensington Construction Company

Eric Teichner, an employee and former son-in-law of Respondent's President Michael McCarthy has done business as

<sup>&</sup>lt;sup>2</sup> The General Counsel apparently agreed with Respondent that it was not obligated to provide bidding records to the Union.

<sup>&</sup>lt;sup>3</sup> Attorney Devaney's wife gave birth to twins on February 16, 2009. Respondent cites her medical appointments and her being consigned to bed rest during her pregnancy as part of the reason for the absence of bargaining sessions during this period. Other reasons for the delay cited by Respondent are Devaney's heavy January 2009 trial schedule, arbitrations, other client matters and an absence of any sense of urgency regarding the Union's unit of eight employees.

<sup>&</sup>lt;sup>4</sup> The General Counsel's complaint does not allege that Respondent violated the Act by sending representatives without authority to bargain to bargaining sessions. It also does not allege that Respondent violated the Act by refusing to provide the Union information on the jobs it was bidding.

<sup>&</sup>lt;sup>5</sup> Respondent cites the need to obtain these payroll records from a payroll service and problems with a former employee as a reason for the delay in providing such records.

Kensington Construction Company. Kensington was established in 2003 or 2004, R. Exh. 4, Tr. 215. McCarthy Construction has been in business since 1958, R. Exh. 4. Kensington has had one or two employees besides Teichner in the past. Kensington worked on a number of union worksites and paid union fringe benefits for its employees. However, the Union fringe benefit funds are suing Kensington for unpaid contributions it alleges are due.

All but two of the jobs Kensington performed were jobs it obtained from Respondent. Kensington never had a subcontract with Respondent. It merely provided union labor to McCarthy Construction. Kensington does not and never owned any motorized equipment, such as power trowels for smoothing concrete. When Kensington worked for Respondent, it used Respondent's power equipment.

Kensington has or had a checking account. The funds in that account were managed by Pat Smalley, then an employee of Respondent. The records of Kensington Construction Company are maintained by McCarthy Construction personnel.

#### **Analysis and Conclusions**

The Union has not established the relevance of the requested information regarding Kensington Construction Company to its duties as collective-bargaining representative; Respondent did not violate Section 8(a)(5) in failing and refusing to provide the information requested regarding Kensington.

When a union requests information relating to an alleged single-employer or alter-ego relationship, the union bears the burden of establishing the relevance of the requested information. Reiss Viking, 312 NLRB 622, 625 (1993); Bentley-Jost Electric Corp., 283 NLRB 564, 568 (1987), citing Walter N. Yoder & Sons. 754 F.2d 531, 536 (4th Cir. 1985). A union cannot meet its burden based on a mere suspicion that an alter-ego or singleemployer relationship exists; it must have an objective, factual basis for believing that the relationship exists. See M. Scher & Son, Inc., 286 NLRB 688, 691 (1987). Under current Board law, however, the union is not obligated to disclose those facts to the employer at the time of the information request. Baldwin Shop 'N Save, 314 NLRB 114, 121 (1994); Corson & Gruman, 278 NLRB 329, 333-334 fn. 3 (1986). Rather, it is sufficient that the General Counsel demonstrate at the hearing that the union had, at the relevant time, a reasonable belief.

If the Union had a reasonable objective basis for believing that an alter-ego relationship exists between Respondent and Kensington Construction Company, it is entitled to the information it requested regarding Kensington, *Cannelton Industries*, 339 NLRB 996 (2003); \*\*Contract Flooring Systems, Inc., 344 NLRB 925 (2005); Z-Bro, Inc., 300 NLRB 87, 90 (1990).

However, the Union in this matter did not have a reasonable objective basis for believing that an alter-ego relationship existed between Respondent and Kensington under the law of the United States Court of Appeals for the Sixth Circuit. Moreover, the Union has not established that it had such a reasonable belief pursuant to prevailing Board law.<sup>9</sup>

Respondent argues that the Union could not have a reasonable objective basis for its contention in light of a decision by Judge Rosen of the United States District Court for the Eastern District of Michigan, *Cement Masons Pension Trust Fund Detroit & Vicinity v. McCarthy,* 2006 WL 770444 (E.D. Mich. 2006) (R. Exh. 4). Normally, a finding in a decision denying summary judgment, such as Judge Rosen's, would not have a preclusive effect in future litigation. However, Judge Rosen's decision rests on Sixth Circuit case law, *Trustees of the Resilient Floor Decorators Insurance Fund v. A & M Installations, Inc.*, 395 F.3d 244 (6th Cir. 2005), to wit: the alter-ego doctrine cannot be applied in a situation where a nonunion company establishes a union company and no preexisting labor obligations are disrupted.

Neither the Union nor the General Counsel has articulated a theory under which the *Resilient Floor* case is not dispositive of the Union's claim that McCarthy and Kensington are alter egos. Therefore, I find that Respondent did not violate Section

In some situations, a union's reasons for suspecting that discrimination is occurring will be readily apparent. When it is clear that the employer should have known the reason for the union's request for information, a specific communication of the facts underlying the request may not be necessary. As the ALJ noted in this case, two of Hertz's managers testified that credibly that they had no idea why the Union believed that Hertz's hiring practices might be discriminatory until they arrived at the administrative hearing. . . .

105 F.3d at 874.

By contrast, Respondent was well aware that Kensington was owned by Eric Teichner, one of its employees, and that on some of its jobs, Teichner supervised both McCarthy and Kensington employees performing the same kind of work.

<sup>9</sup> C.E.K. Industrial Mechanical Contractors, 295 NLRB 635 (1989), a case in which the Board found an alter-ego relationship between a nonunion employer and a later-established union employer, is distinguishable on its facts. In that case, although the nonunion employer engaged in business prior to the incorporation of the union employer, the nonunion employer amended its certificate of incorporation after the union employer had entered into a collective-bargaining agreement that allowed it to perform construction work. Thus, unlike the instant case, there was an inference that the nonunion employer amended its certificate of incorporation to avoid the obligations of the collective-bargaining agreement.

<sup>&</sup>lt;sup>6</sup> Teichner did not draw a salary from Kensington. He was paid by Respondent for directing the work of Kensington employees. At least two of the other Kensington employees had worked for McCarthy in the past.

<sup>&</sup>lt;sup>7</sup> A couple of other firms also supply union labor to McCarthy Construction. However, unlike Kensington these companies have their own equipment and their finances are not managed by McCarthy Construction employees. Unlike Kensington, only a small part of the business of these other entities involves furnishing labor to McCarthy.

<sup>&</sup>lt;sup>8</sup> Current Board law does not require the Union to disclose, at the time of its information request, the facts which cause it to suspect an alter-ego or single-employer relationship exists. The United States Court of Appeals for the Third Circuit, however, generally does require the Union to disclose sufficient facts to the employer at the time of any information request to demonstrate its claim of relevance, *Hertz Corp. v. NLRB*, 105 F.3d 868 (3d Cir. 1997). However, the Court made clear that a union does not have to communicate the facts justifying its request in situations where the employer already is aware of such facts:

8(a)(5) and (1) in refusing to provide the Union information regarding Kensington.

Respondent Violated Section 8(a)(5) in Unreasonably Delaying its Responses to the Union's June 17, 2008 Information Request

An employer must respond to an information request in a timely manner. An unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all, *American Signature Inc.*, 334 NLRB 880, 885 (2001).<sup>10</sup>

The Board recently summarized the standard that it employs in assessing a claim of unreasonable delay: In determining whether an employer has unlawfully delayed responding to an information request, the Board considers the totality of the circumstances surrounding the incident. Indeed, it is well established that the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable good-faith effort to respond to the request as promptly as circumstances allow. In evaluating the promptness of the response, the Board will consider the complexity and extent of information sought, its availability and the difficulty in retrieving the information, *West Penn Power Co.*, 339 NLRB 585, 587 (2003), enfd. in pertinent part 349 F.3d 233 (4th Cir. 2005).

Applying this test to the instant case, I find that Respondent violated Section 8(a)(5) and (1) in not providing much of the information requested on June 17, in a timely fashion. In *American Signature*, supra, the Board found a violation where the employer provided the information requested by the Union 2-1/2 to 3 months after the request. In *Earthgrains, Co.*, 349 NLRB 389, 400 (2007), the Board found a violation where the employer responded 4 months after the request without explaining the delay.

Respondent has offered no explanation as to why it took 3 months to inform the Union as to what jobs it had underway or had been awarded. I find a violation with respect to the delay in providing this information in and of itself.

Respondent contends that its delay in providing some of the other information requested was due to the fact that it had to obtain this information from its payroll service and due to the fact that an employee had embezzled funds from the company. However, it is vague as to what specific information these factors impacted. Respondent does not specifically contend, for example, that it was unable to provide the Union with the addresses of its employees earlier than September. It view of the impreciseness of the reasons given for the delay, I find Respondent in violation with respect to all the information that Respondent failed to provide until September 16.

Respondent Violated Section 8(a)(5) and (1) of the Act by Failing and Refusing to Meet with the Union at Reasonable Times for the Purpose of Collective Bargaining as Required by Section 8(d) of the Act

As the Union points out in its brief, between April 9, 2008 and March 10, 2009, Respondent cancelled or postponed 7 of the 15 scheduled bargaining sessions. As Respondent points

out in its brief, that Board looks at the totality of a party's conduct in determining whether or not it has bargained in good faith under the Act, *Calex Corp.*, 322 NLRB 977 (1997).

The totality of Respondent's conduct: i.e., the number of cancellations and postponements, the lack of good cause particularly for the cancellations of the November 5 and December 4 sessions, the failure to provide the Union with additional bargaining dates for 2-1/2 months following the Union's December 3 request and the failure to provide information in a timely fashion lead me to conclude that Respondent did not bargain in good faith.

From the outset of negotiations, Respondent gave collective bargaining a very low priority and took a very lackadaisical attitude towards its obligations. This became even more pronounced beginning in October 2008. As a result of this attitude there were no sessions at which bargaining took place between October 27, 2008 and March 10, 2009.

There was no compelling reason for Respondent to cancel the November 5 session, since Respondent could have sought an extension of time in which to file its answer to the General Counsel's complaint, which was due that day. Moreover, Respondent filed its answer 1-1/2 hour before the bargaining session was scheduled to begin.

Similarly, there was no compelling reason for Respondent to cancel the December 4 session. Respondent has not shown why its uncertainty as to what information the Union desired could not have been resolved without cancelling the session. Moreover, it has not shown why its counsel's business trip to Washington on December 4 took priority over collective bargaining.

Most telling is Respondent's 2-1/2-month failure to respond to the Union's December 3, 2008 request for additional bargaining dates. While its counsel cited his busy schedule and personal concerns for the delay, the "busy negotiator" assertion is not a valid excuse for Respondent's failure to meet at reasonable times.

[I]t is well settled that an employer's chosen negotiator is its agent for the purposes of collective bargaining, and that if the negotiator causes delays in the negotiating process, the employer must bear the consequences.

Calex Corp., supra at 978.

Thus, in looking at the totality of Respondent's conduct, I find that it violated Section 8(a)(5) and (1) of the Act by failing and refusing to meet with the Union at reasonable times for the purpose of collective bargaining as required by Section 8(d) of the Act. 11

 $<sup>^{10}</sup>$  This case has also been cited under the name of *Amersig Graphics, Inc.* 

<sup>&</sup>lt;sup>11</sup> Suffield Academy, 336 NLRB 659, 664–666 (2001), which is cited by Respondent, is easily distinguishable from the instant case. In that case the judge found that the Employer had valid reasons for not meeting with the Union for a 6-week period. However, in Suffield Academy, the Employer was busy during that 6 weeks responding to the Union's information requests and accusations made by the Union that were not part of the bargaining process. In contrast, Respondent does not claim in the instant case that it was too busy responding to the Union to meet with it. Indeed, Respondent in this matter appears to have devoted very little time and effort to the Union or to the collective-bargaining negotiations between October 27, 2008 and March 10, 2009.

#### CONCLUSIONS OF LAW

- 1. Respondent violated Section 8(a)(5) and (1) by failing to provide information requested by the Union, which was relevant to collective bargaining, in a timely fashion.
- 2. Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to meet with the Union at reasonable times for the purpose of collective bargaining as required by Section 8(d) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Because Respondent failed to bargain in good faith for at least 4 months, the Union's certification year will be extended until at least 1 year after Respondent begins, or resumes bargaining in good faith, *Marc Jac Poultry Co.*, 136 NLRB 785 (1962). Moreover, Respondent is ordered to bargain face-to-face, in good faith, not less than 24 hours per month, in daily sessions of between 4 and 6 hours, or upon another schedule mutually agreed to by the parties, until either a collective-bargaining agreement or a good-faith impasse is reached.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>12</sup>

#### ORDER

The Respondent, McCarthy Construction Company, Walled Lake, Michigan, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing or refusing to bargain in good faith at reasonable times for the purpose of collective bargaining as required by Section 8(d) of the Act.
- (b) Unreasonably delaying providing information requested by the Union which is relevant for collective-bargaining purposes.
- (c) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request, bargain with the Union as the exclusive representative of all of Respondent's full-time and regular part-time employees working on building and construction projects at and out of its facility at 1033 Rig Street, Walled Lake, Michigan, concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.
- (b) Upon the Union's request, bargain collectively in good faith, within 15 days of this recommended Order, no less than 24 hours per month, in daily sessions of between 4 and 6 hours,

<sup>12</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

or upon another schedule mutually agreed to by the parties, until either a collective-bargaining agreement or a good-faith impasse is reached.

- (c) Within 14 days after service by the Region, post at its Walled Lake, Michigan facility, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 17, 2008
- (d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. May 27, 2009

#### APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT unreasonably delay or refuse to provide necessary and relevant information requested by the Union to perform its responsibilities as the exclusive collective-bargaining representative of all our full-time and regular part-time employees working on building and construction projects at and/or working out of our facility at 1033 Rig Street, Walled Lake, Michigan.

<sup>&</sup>lt;sup>13</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT cancel bargaining sessions without just cause and without offering timely and reasonable alternative dates to the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union no less than 24 hours per month, in daily sessions of between 4 and 6 hours, or

another mutually agreed upon schedule, and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit. We recognize that the Union's certification year has been extended for 12 months

McCarthy Construction Company